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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Juan Salazar,

Plaintiff,

v.

Diners 4 U, LLC, an Arizona Limited
Liability Company; **Bruce Landau and**
Cecilia Gallagher, a Married Couple;

Defendant.

No. _____

VERIFIED COMPLAINT

Plaintiff, Juan Salazar (“Plaintiff”), sues the Defendants, Diners 4 U, LLC, Bruce Landau and Cecilia Gallagher (collectively, “Defendants”), and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid wages, liquidated damages, attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq. the Arizona Minimum Wage Act (“AMWA”), Arizona Revised Statutes (“A.R.S.”) Title 23, Chapter 8, and the Arizona Wage Act (“AWA”), A.R.S. Title 23, Chapter 2, Article 7.

4. The AWA, A.R.S. § 23-350, et seq., establishes standards for wage payments to employees within the State of Arizona.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of the United States. This Court also has subject matter jurisdiction pursuant 28 U.S.C. § 1367 because the state law claims asserted herein are so related to claims in this action over which this Court has subject matter jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

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PARTIES

7. At all material times, Plaintiff is an individual residing in Maricopa County, Arizona, and is a former employee of Defendants.

8. At all material times, Defendant Diners 4 U, LLC was a limited liability company duly licensed to transact business in the State of Arizona. At all material times, Defendant Diners 4 U, LLC does business, has offices, and/or maintains agents for the transaction of its customary business in Maricopa County, Arizona.

9. Defendant Diners 4 U, LLC is an Arizona limited liability, authorized to do business in the State of Arizona and is at all relevant times Plaintiff's employer as defined by 29 U.S.C. § 203(d).

10. Under the FLSA, Defendant Diners 4 U, LLC is an employer. The FLSA defines "employer" as any person who acts directly or indirectly in the interest of an employer in relation to an employee. At all relevant times, Defendant Diners 4 U, LLC had the authority to hire and fire employees, supervised and controlled work schedules or the conditions of employment, determined the rate and method of payment, and maintained employment records in connection with Plaintiff's employment with Defendants. As a person who acted in the interest of Defendants in relation to the company's employees, Defendant Diners 4 U, LLC is subject to liability under the FLSA.

11. Defendants Bruce Landau and Cecilia Gallagher are, upon information and belief, husband and wife. They have caused events to take place giving rise to the claims in this Complaint as to which their marital community is fully liable. Bruce Landau and

1 Cecilia Gallagher are owners of Defendant Diners 4 U, LLC and were at all relevant
2 times Plaintiff's employer as defined by the FLSA, 29 U.S.C. § 203(d).

3 12. Under the FLSA, Defendants Bruce Landau and Cecilia Gallagher are
4 employers. The FLSA defines "employer" as any individual who acts directly or
5 indirectly in the interest of an employer in relation to an employee. Bruce Landau and
6 Cecilia Gallagher are owners of Defendant Diners 4 U, LLC. At all relevant times, they
7 had the authority to hire and fire employees, supervised and controlled work schedules or
8 the conditions of employment, determined the rate and method of payment, and
9 maintained employment records in connection with Plaintiff's employment with
10 Defendants. As persons who acted in the interest of Defendants in relation to the
11 company's employees, Bruce Landau and Cecilia Gallagher are subject to individual
12 liability under the FLSA.

13 13. Plaintiff is further informed, believes, and therefore alleges that each of the
14 Defendants herein gave consent to, ratified, and authorized the acts of all other
15 Defendants, as alleged herein.

16 14. Defendants, and each of them, are sued in both their individual and
17 corporate capacities.

18 15. Defendants are jointly and severally liable for the injuries and damages
19 sustained by Plaintiff.

20 16. At all relevant times, Plaintiff was an "employee" of Defendants Diners 4
21 U, LLC, Bruce Landau and Cecilia Gallagher as defined by the FLSA, 29 U.S.C. § 201,
22 *et seq.*

1 17. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
2 Defendants Diners 4 U, LLC, Bruce Landau and Cecilia Gallagher.

3 18. At all relevant times, Defendants Diners 4 U, LLC, Bruce Landau and
4 Cecilia Gallagher were and continue to be “employers” as defined by the FLSA, 29
5 U.S.C. § 201, *et seq.*

6 19. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
7 Defendants Diners 4 U, LLC, Bruce Landau and Cecilia Gallagher.

8 20. At all relevant times, Plaintiff was an “employee” of Defendants Diners 4
9 U, LLC, Bruce Landau and Cecilia Gallagher as defined by A.R.S. § 23-362.

10 21. At all relevant times, Defendants Diners 4 U, LLC, Bruce Landau and
11 Cecilia Gallagher were and continue to be “employers” as defined by A.R.S. § 23-362.

12 22. Defendants Diners 4 U, LLC, Bruce Landau and Cecilia Gallagher
13 individually and/or through an enterprise or agent, directed and exercised control over
14 Plaintiff’s work and wages at all relevant times.

15 23. Plaintiff, in his work for Defendants Diners 4 U, LLC, Bruce Landau and
16 Cecilia Gallagher, was employed by an enterprise engaged in commerce that had annual
17 gross sales of at least \$500,000.

18 24. At all relevant times, Defendants Diners 4 U, LLC, Bruce Landau and
19 Cecilia Gallagher, was engaged in commerce or the production of goods for commerce.

20 25. At all relevant times, Plaintiff, in his work for Defendants Diners 4 U, LLC,
21 Bruce Landau and Cecilia Gallagher, was engaged in interstate commerce.

NATURE OF THE CLAIM

28. Plaintiff was hired by Defendants as a kitchen manager in or around May 2021 and worked for Defendants through approximately August 10, 2021.

30. Plaintiff was generally paid by Defendants on a weekly basis on Mondays.

32. Defendants failed to compensate Plaintiff any wages whatsoever for his final week of work for Defendants.

34. To date, Plaintiff has not received any wages whatsoever for the hours he spent working for Defendants.

36. Plaintiff performed approximately 36 hours of work over the course of four shifts for Defendants for which he has still not been compensated.

1 37. Despite performing approximately 36 hours of work for Defendants,
2 Defendants did not pay Plaintiff any wages whatsoever for the pay period at issue.

3 38. As a result of Defendants' having willfully and improperly failed to
4 compensate Plaintiff any wage whatsoever for any of the hours Plaintiff worked for
5 Defendants, Defendants failed to pay the applicable minimum wage to Plaintiff.
6

7 39. As a result of Defendants' having willfully and improperly failed to
8 compensate Plaintiff any wage whatsoever for the final workweek that Plaintiff worked
9 for Defendants, Defendants violated 29 U.S.C. § 206(a).
10

11 40. As a result of Defendants' having willfully and improperly failed to
12 compensate Plaintiff any wage whatsoever for the final workweek that Plaintiff worked
13 for Defendants, Defendants have violated the AMWA, A.R.S. § 23-363.

14 41. As a result of Defendants' having willfully and improperly failed to
15 compensate Plaintiff any wage whatsoever for the final workweek that Plaintiff worked
16 for Defendants, Defendants have violated the AWA, A.R.S. § 23-351.
17

18 42. Defendants have and continue to violate the FLSA by not paying Plaintiff
19 the full applicable minimum wage for all hours worked during his regular workweeks.
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21 43. Defendants have and continue to violate the AMWA by not paying Plaintiff
22 the full applicable minimum wage for all hours worked during his regular workweeks.

23 44. Defendants have and continue to violate the AWA by not paying Plaintiff
24 all wages due and owing for all hours worked during his regular workweeks.
25

26 45. Plaintiff is a covered employee within the meaning of the FLSA.

27 46. Plaintiff is a covered employee within the meaning of the AMWA.

1 47. Plaintiff is a covered employee within the meaning of the AWA.

2 48. Plaintiff was a non-exempt employee.

3 49. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
4 of his rights under the FLSA.

5 50. Defendants individually and/or through an enterprise or agent, directed and
6 exercised control over Plaintiff's work and wages at all relevant times.

7 51. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
8 from Defendants compensation for unpaid wages, an additional amount equal amount as
9 liquidated damages, interest, and reasonable attorney's fees and costs of this action under
10 29 U.S.C. § 216(b).

11 52. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
12 from Defendants compensation for unpaid wages, an additional amount equal to twice the
13 unpaid wages as liquidated damages, interest, and reasonable attorney's fees and costs of
14 this action under A.R.S § 23-363.

15 53. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
16 from Defendants compensation for his unpaid wages at an hourly rate, to be proven at
17 trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,
18 and his costs incurred under A.R.S. § 23-355.

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23 **COUNT ONE: FAIR LABOR STANDARDS ACT**
24 **FAILURE TO PAY MINIMUM WAGE**

25 54. Plaintiff realleges and incorporates by reference all allegations in all
26 preceding paragraphs.

1 55. Defendants willfully and improperly failed to compensate Plaintiff any
2 wage whatsoever for any of the hours Plaintiff worked for Defendants during the final
3 workweek of his employment.

4 56. As a result, Defendants failed to pay the applicable minimum wage to
5 Plaintiff during the final workweek of his employment.

6 57. Defendants' practice of willfully and improperly failing to compensate
7 Plaintiff any wage whatsoever for any of the hours Plaintiff worked for Defendants
8 during the final workweek of his employment violated the FLSA, 29 U.S.C. § 206(a).
9

10 58. Plaintiff is therefore entitled to compensation for the full applicable
11 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as
12 liquidated damages, together with interest, reasonable attorney's fees, and costs.
13

14 **WHEREFORE**, Plaintiff, Juan Salazar, respectfully requests that this Court grant
15 the following relief in Plaintiff's favor, and against Defendants:
16

17 A. For the Court to declare and find that the Defendant committed one of more
18 of the following acts:

19 i. Violated minimum wage provisions of the FLSA, 29 U.S.C. §
20 206(a), by failing to pay proper minimum wages;

21 ii. Willfully violated minimum wage provisions of the FLSA, 29
22 U.S.C. § 206(a) by willfully failing to pay proper minimum wages;
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24 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
25 determined at trial;
26

- C. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- D. For the Court to award prejudgment and post-judgment interest;
- E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth herein;
- F. Such other relief as this Court shall deem just and proper.

COUNT TWO: ARIZONA MINIMUM WAGE ACT
FAILURE TO PAY MINIMUM WAGE

59. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

60. Defendants willfully and improperly failed to compensate Plaintiff any wage whatsoever for any of the hours Plaintiff worked for Defendants during the final workweek of his employment.

61. As a result, Defendants failed to pay the applicable minimum wage to Plaintiff during the final workweek of his employment.

62. Defendants' practice of willfully failing or refusing to pay Plaintiff at the required minimum wage rate during the final workweeks of his employment violates the AMWA, A.R.S. § 23-363.

63. Plaintiff is therefore entitled to compensation for the full applicable minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

1 **WHEREFORE**, Plaintiff, Juan Salazar, respectfully requests that this Court grant
 2 the following relief in Plaintiff's favor, and against Defendants:

- 3 A. For the Court to declare and find that the Defendants committed one of
 4 more of the following acts:
- 5 i. Violated minimum wage provisions of the AMWA, A.R.S. § 23-
 6 363, by failing to pay proper minimum wages;
- 7 ii. Willfully violated minimum wage provisions of the AMWA, A.R.S.
 8 § 23-363 by willfully failing to pay proper minimum wages;
- 9 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
 10 determined at trial;
- 11 C. For the Court to award compensatory damages, including liquidated
 12 damages pursuant to A.R.S. § 23-364, to be determined at trial;
- 13 D. For the Court to award prejudgment and post-judgment interest;
- 14 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
 15 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
 16 herein;
- 17 F. Such other relief as this Court shall deem just and proper.

18 **COUNT THREE: ARIZONA WAGE ACT**
 19 **FAILURE TO PAY WAGES DUE AND OWING**

20 64. Plaintiff realleges and incorporates by reference all allegations in all
 21 preceding paragraphs.
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1 65. As a result of the allegations contained herein, Defendants did not
2 compensate Plaintiff wages due and owing to him.

3 66. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

4 67. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff
5 for the final workweek he was employed by Defendants.

6 68. Defendants knew that – or acted with reckless disregard as to whether –
7 their refusal or failure to properly compensate Plaintiff over the course of his
8 employment would violate federal and state law, and Defendants were aware of the
9 Arizona Wage Act’s requirements during Plaintiff’s employment. As such, Defendants’
10 conduct constitutes a willful violation of the Arizona Wage Act.

11 69. Plaintiff is therefore entitled to compensation for his unpaid wages at an
12 hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid
13 wages, plus interest thereon, and his costs incurred.

14 **WHEREFORE**, Plaintiff, Juan Salazar, requests that this Court grant the
15 following relief in Plaintiff’s favor, and against Defendants:

16 A. For the Court to declare and find that the Defendants violated the unpaid
17 wage provisions of A.R.S. § 23-350, et seq., by failing to pay wages due
18 and owing to Plaintiff;

19 B. For the Court to award an amount that is treble Plaintiff’s unpaid wages
20 pursuant to A.R.S. § 23-355, in amounts to be determined at trial;

21 C. For the Court to award prejudgment and post-judgment interest on any
22 damages awarded;

- 1 D. For the Court to award Plaintiff's reasonable attorneys' fees and costs of
2 the action and all other causes of action set forth in this Complaint; and
3 E. Such other relief as this Court deems just and proper.
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7 **JURY TRIAL DEMAND**

8 Plaintiff hereby demands a trial by jury on all issues so triable.

9 RESPECTFULLY SUBMITTED this 28th Day of January, 2022.
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11 BENDAU & BENDAU PLLC

12 By: /s/ Christopher J. Bendau
13 Clifford P. Bendau, II
14 Christopher J. Bendau
15 *Attorneys for Plaintiff*
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VERIFICATION

Plaintiff, Juan Salazar, declares under penalty of perjury that he has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on his personal knowledge, except as to those matters stated upon information and believe, and, as to those matters, he believes them to be true.


Juan salazar (Jan 28, 2022 08:55 MST)
Juan Salazar